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STATE OF MICHIGAN

IN THE SUPREME COURT

CITY OF MONROE,

Plaintiff/Appellant,

v

HELEN FAITH JONES,

Defendant/Appellee.

Supreme Court Case No:
Court of Appeals Case No: 241486
Circuit Court Case No: 01-13988-AV

PLAINTIFF-APPELLANT, CITY OF MONROE'S, SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL AS PERMITTED BY THIS COURT'S JULY 8, 2004, ORDER

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SUPPLEMENTAL ARGUMENT IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

On July 8, 2004, this Court issued its order directing the clerk to schedule oral argument "on whether to grant the application or take other peremptory action permitted by MCR 7.302(G)(1). The parties may file supplemental briefs within 28 days of the date of this order." By the terms of the order, there appears to be two issues which the parties may address by way of supplemental briefing, namely: (1) whether the application for leave to appeal should be granted and (2) in the event that it is granted, or peremptory action is taken by the court, what relief should be granted.

Each of these issues will be addressed in order.

In regard to whether this Court should grant the application filed by the City of Monroe, obviously the City believes the application should be granted on the basis articulated in its application namely, MCR 7.302(B)(3): "The issue involves legal principles of major significance to the state's jurisprudence." Several reasons support granting the application on this ground.

First of all, the Court of Appeals itself found the issue significant enough to designate its decision for publication. In deciding to published the decision, the Court of Appeals is guided by MCR 7.215(B) which provides:

> "RULE 7.215 OPINIONS, ORDERS, JUDGMENTS, AND FINAL PROCESS FROM COURT OF APPEALS
>
> * * *
>
> (B) **Standards for Publication**. A court opinion must be published if it:
>
> (1) establishes a new rule of law;
>
> (2) construes a provision of constitution, statute, ordinance, or court rule;
>
> (3) alters or modifies an existing rule of law or extends it to a new

> factual context;
>
> (4) reaffirms a principle of law not applied in a recently reported decision;
>
> (5) involves a legal issue of continuing public interest;
>
> (6) criticizes existing law;
>
> (7) creates or resolves an apparent conflict of authority, whether or not the earlier opinion was reported; or
>
> (8) decides an appeal from a lower court order ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid."

Based on the standards for publication identified in the court rule, criteria (1), (2) and (5) appear to serve as a basis for the Court of Appeals designating its decision in this matter for publication. Hence, the Court itself recognized that its decision involved an issue of substantial significance to the State's overall jurisprudence.

More particularly, the issue here involved the scope of the Michigan constitution and the Home Rule City Act, Constitution 1963, Art. 7, § 22, MCL 117.1 et seq. which, in fact, is framed by the Court of Appeals in its opinion as follows:

> "It could be argued that § 675(6)'s reference to the Vehicle Code, and here specifically § 674, simply means that a parking citation predicated on violation of a time restriction does not exempt a disabled person from liability regardless of the mechanism through which a municipality seeks enforcement, i.e., an ordinance or state statute. We find that such a reading is contrary to the plain language of § 675(6)."

See, Court of Appeals' decision, p. 4.

The Court of Appeals then concludes that MCL 257.675(6) precludes the plaintiff from being held liable "because she is a disabled person and was cited, not for violating The Vehicle Code, but

for violating a local time-restriction parking ordinance not contemplated by MCL 257.675(6)[1] as constituting an exception to the liability exemption for disabled persons." See Court of Appeals Opinion, at p. 4.

The Court of Appeals concluded that, "if the local time-restriction ordinance is read to be applicable to disabled persons, it would directly conflict with the clear, unambiguous language of § 675(6)." See Court of Appeals Opinion, at p. 3. The Court noted that if liability was predicated on a time-restriction ordinance, "despite the language contained in § 675(6), that does not reference such an ordinance, we would be violating the maxim of expressio unius exclusio alterius. In the context of examination of the statute, the maxim means 'that the express mention in a statute of one thing applies the exclusion of other similiar things . . .." See Court of Appeals Opinion at p. 3. There are several things the Court of Appeals failed to acknowledge in its analysis.

First of all, under the Michigan Motor Vehicle Code, MCL 257.674, lists several prohibited parking practices, including 257.674(w), "violation of an official sign restricting the period of time

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[1]MCL 257.675(6) states:

> "A disabled person with a certificate of identification, windshield placard, special registration plates issued under Section 803d, a special registration plate issued under section 803f that has a tab for persons with disabilities attached, a certificate of identification or windshield placard from another state, or special registration plates form another state issued for persons with disabilities is entitled to courtesy in the parking of a vehicle. *The courtesy shall relieve the disabled person or the person transporting the disabled person from liability for a violation with respect to parking, other than in violation of this act. A local authority may by ordinance prohibit parking on a street or highway to create a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extending to veterans and physically disabled person under this subsection do not supersede that ordinance.* [Emphasis added.]

for or manner or parking." The Michigan Attorney General released an opinion that based on that statute, expressly requires a person to comply with posted signs that restrict period of time permitted for parking even though the person's parked vehicle displays a valid disabled parking designation. See 2000 Mich OAG #7041, released February 18, 2000. The Court of Appeals found that statutory authorization inapplicable because Mrs. Jones was ticketed under the local ordinance not through the Michigan Vehicle Code. Assuming that it is a persuasive legal distinction, it must be remembered that the City of Monroe, as most cities in the State of Michigan, in addition to being a Home Rule City, adopted the Michigan Vehicle Code and the Uniform Traffic Code as allowed by statutorily enabling legislation, MCL 57.951. Therefore, the local ordinance was authorized by statutory authority and the ordiance reflects the Michigan Motor Vehicle Code parking restrictions with the effect that in reality Mrs. Jones was ticketed for violating the Michigan Motor Vehicle Code as promulgated through the local ordinance. See in general, *City of East Lansing v Yocca,* 142 Mich App 491 (1985).

Furthermore, where the challeged local ordinances are in substantial conformity with the local traffic code, they are enforced. See *Moloney-Viestra v Michigan State University,* 417 Mich 224 (1983).

Accordingly, given that the City's local ordinance was promulugated through enabling legislation and the City adopted Uniform Traffic Code and the Michigan Motor Vehicle Code, Mrs. Jones was ticketed through the State statute by way of enabling legislation. Therefore, the result in this case should be that the Court grants this application and reverses the Court of Appeals' decision in its entirety.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

DATED: August 2, 2004

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF GENESEE)

ROBERT G. GOLDSTEIN, being first duly sworn, deposes and says that he is associated with the law firm of GARAN LUCOW MILLER, P.C., Attorneys for Plaintiff-Appellant, CITY OF MONROE, in the above-entitled cause of action and that on the August 2, 2004, he caused to be served a copy of:

- Plaintiff-Appellant, City of Monroe's, Supplemental Brief in Support of Application for Leave to Appeal as Permitted by this Court's July 8, 2004, Order
- Proof of Service

upon the attorneys of record by enclosing a copy thereof in a well-sealed envelope addressed to:

DAVID F. GRENN
Attorney at Law
25 South Monroe St., Ste. 202
Monroe, Michigan 48161

with full legal postage prepaid thereon and deposited in the United States mail.

Further, deponent saith not.

ROBERT D. GOLDSTEIN

Subscribed and sworn to before me
on August 2, 2004.

CHRISTINE C. VIZANKO, Notary Public
Genesee County, Michigan
My comm. expires: 10/8/06